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Mr. Harold Cheney, Director
Division of Purchase and Property
State House
Concord, New Hampshire

CONCORD, N.H.

Dear Mr. Cheney:

You have requested our advice as to the intent of the Legislature regarding that portion of the appropriation act of 1955 which provides for funds for the New Hampshire Distributing Agency. More specifically you ask whether it is within the legislative intent that funds accrued by way of the Surplus Foods Division may be used in the Surplus Properties Division.

It is my understanding that the Surplus Foods Division was in existence prior to the 1955 Legislature. That at that time the Surplus Properties Division was, by Governor and Council resolution, integrated with the Surplus Foods Division. This was for the purpose of permitting the handling of both surplus foods and surplus property from the same agency. The 1955 appropriation is found under Administration and Control and is headed "Surplus food and commodities distribution".

It is my understanding that under the federal law all funds accumulated by these two Divisions are used to defray expenses incurred by the State in the handling of these properties. The federal law provides for the accumulation of a surplus, essentially in the form of working capital. The working capital fund may not increase beyond certain limitations and in the event that either or both of these Divisions are disbanded, the funds would revert in a pro rata manner to those agencies which have received goods and paid fees set by the Agency. While there is an appropriation to carry on the functions of this Agency, in its true sense, the funds still belong to the organizations from which they were secured.

In view of the fact that the surplus foods and commodities are combined in the Budget Act there was no evidence by the Legislature that these Divisions should be separate and distinct as far as the use of money is concerned. Under the present program it appears that funds accumulated as a balance under the

Mr. Harold Cheney, Director

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Surplus Foods Program has been used to implement the start of the Surplus Commodities Program. I believe that this is permissible on the basis that the funds are to be replaced when the Surplus Properties Program is in full swing and because the Legislature made no attempt to separate the two Divisions. If such use of funds is in conflict with the various Federal laws relating to these two Divisions it is my suggestion that the next Legislature be acquainted with this fact and set up two Divisions under the New Hampshire Distributing Agency, rather than one.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General

AEB,Jr/T.